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December 12, 2006

DEPARTMENT OF ENERGY
OFFICE OF HEARINGS AND APPEALS

Hearing Officer's Decision

Name of Case: Personnel Security Hearing

Date of Filing: October 28, 2004

Case Number: TSO-0160

This Decision concerns the eligibility of XXXXXXXXXXXX (the individual) to hold an access authorization (also called a security clearance). The local DOE security office determined that information in its possession created substantial doubt about the individual's eligibility for an access authorization under the Department of Energy (DOE) regulations set forth at 10 C.F.R. Part 710, Subpart A, entitled "Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material." As explained below, I have concluded that the individual's access authorization should be granted.

Background

The individual works for a contractor at a DOE facility where some assignments require an access authorization. The individual's employer requested access authorization for the individual in late 2001. He submitted a Questionnaire for National Security Positions (QNSP) in September 2001. As a result of his responses on the QNSP, the local security office conducted an interview with the individual in June 2002. Because the information the local security office obtained during that interview did not resolve concerns that the local security office had concerning his responses on the QNSP, the individual was sent for an interview with a DOE consultant psychiatrist on February 4, 2003. The DOE psychiatrist produced an evaluative report for the local security office on February 24, 2003. The local security office issued a Notification Letter to the individual on August 4, 2004. The Notification Letter alleges that DOE has substantial doubt about the individual's eligibility for a security clearance, based on disqualifying criteria set forth in section 710.8, paragraphs (h), (j), (k) and (l).

The Notification Letter alleges that the individual has an illness or mental condition that, in the opinion of a psychiatrist, causes or may cause a significant defect in judgment or reliability. See 10 C.F.R. § 710.8(h) (Criterion H). This charge is based on the DOE psychiatrist's evaluative report of the individual, in which he stated that the individual

suffers from Major Depressive Disorder, which he states is an illness that may cause a significant defect in judgment or reliability.

The Notification Letter also alleges that the individual is a user of alcohol habitually to excess. *See* 10 C.F.R. § 710.8(j) (Criterion J). This allegation is based on the DOE psychiatrist's evaluation of the individual. In his report, the DOE psychiatrist stated that the individual was drinking alcohol habitually to excess from the early 1970s through the 1990s, and is a user of alcohol habitually to excess until such time as he shows adequate evidence of rehabilitation or reformation. According to the DOE psychiatrist's report, the individual would need two years of abstinence from alcohol and all non-prescribed controlled substances, including 100 hours of attendance at Alcoholics Anonymous meetings with a sponsor or 50 hours of professionally led substance abuse treatment, to provide adequate evidence of rehabilitation. In the absence of any organized treatment, the individual would need five years of sobriety to show adequate evidence of reformation. The individual himself provided additional evidence of drinking to excess, including his statements to the DOE psychiatrist that he was drinking to the point of intoxication as recently as December 2002, two months before the evaluation. He further admitted to the local security office that he was arrested for Driving Under the Influence (DUI) in 1982 and admitted himself into an inpatient substance abuse treatment center in 1983. In his interview with the DOE psychiatrist, he reported that he drank to intoxication at least once a month and frequently more, starting in high school and extending through his military service. He stated that after he married in the late 1980s, he reduced his heavy drinking, and has drunk to intoxication roughly twice a year from then until the present.

The Notification Letter also alleges that the individual used illegal drugs, including marijuana, cocaine, and mushrooms, from the 1970s through 2001. *See* 10 C.F.R. § 710.8(k) (Criterion K). The DOE psychiatrist stated in his report that the individual "is or has been" a user of illegal drugs habitually to excess for a number of years between 1972 and 1999. In his report, the DOE psychiatrist stated that the individual could achieve reformation or rehabilitation from his illegal drug use by meeting the same requirements that he established for the individual's reformation or rehabilitation from alcohol use. Although the DOE psychiatrist understood that the individual's last use of any illegal drug was in 1999, the local security office stated in the Notification Letter that his most recent use of marijuana was in "2000-2001."

Finally, the Notification Letter alleges that the individual "has engaged in unusual conduct or is subject to circumstances which tend to show that he is not honest, reliable, or trustworthy; or which furnishes reason to believe that he may be subject to pressure, coercion, exploitation or duress which may cause him to act contrary to the best interests of the national security." *See* 10 C.F.R. § 710.8(l) (Criterion L). The information that raised the local security office's concerns under this criterion relates to earlier determinations regarding the individual's access authorization: during his military service in the 1970s, his security clearance was suspended twice, for marijuana use and purchase; and a request for reinstatement of his access authorization was denied in 1986 or 1987, due to his minimization of drug use.

Because of these security concerns, the case was referred for administrative review. The individual filed a request for a hearing. The local security office transmitted the hearing request to the Office of Hearings and Appeals (OHA), and the Director of OHA appointed me as the Hearing Officer in this case. At the hearing I convened, the DOE Counsel called one witness, the DOE psychiatrist. The individual, who represented himself, testified on his own behalf, and called six other witnesses: his wife, his group leader, his therapist, his internist, a friend and co-worker, and another co-worker. The local security office submitted 10 written exhibits. The individual submitted a written answer to the Notification Letter and introduced three written exhibits.

Standard of Review

The applicable DOE regulations state that “[t]he decision as to access authorization is a comprehensive, common-sense judgment, made after consideration of all relevant information, favorable and unfavorable, as to whether the granting or continuation of access authorization will not endanger the common defense and security and is clearly consistent with the national interest.” 10 C.F.R. § 710.7(a). In resolving questions about the individual’s eligibility for access authorization, I must consider the relevant factors and circumstances connected with the individual’s conduct. These factors are set out in section 710.7(c):

the nature, extent, and seriousness of the conduct; the circumstances surrounding the conduct, to include knowledgeable participation; the frequency and recency of the conduct; the age and maturity of the individual at the time of the conduct; the voluntariness of participation; the absence or presence of rehabilitation or reformation and other pertinent behavioral changes; the motivation for the conduct; the potential for pressure, coercion, exploitation, or duress; the likelihood of continuation or recurrence; and other relevant and material factors.

A DOE administrative review proceeding under 10 C.F.R. Part 710 is authorized when the existence of derogatory information leaves unresolved questions about an individual’s eligibility for access authorization. A hearing is “for the purpose of affording the individual an opportunity of supporting his eligibility for access authorization.” 10 C.F.R. § 710.21(b)(6). Once DOE has presented derogatory information affecting an individual’s eligibility for access authorization, the individual must come forward with evidence to convince DOE that granting or restoring his or her access authorization “would not endanger the common defense and security and would be clearly consistent with the national interest.” *See, e.g., Personnel Security Hearing, Case No. TSO-0118, 29 DOE ¶ 82,771 at 85,616 (2004), and cases cited therein.* In addition, any doubt as to an individual’s access authorization eligibility shall be resolved in favor of the national security. 10 C.F.R. § 710.7(a). For the reasons discussed below, it is my opinion that the individual has resolved the security concerns described in the Notification Letter, and therefore his access authorization should be granted.

Testimony of the Witnesses at the Hearing

The Wife

The individual's wife testified that they had been married for 14 years. Transcript of Hearing (Tr.) at 8. Regarding her husband's alcohol consumption, she stated that he has consumed no alcohol in the past six years. Tr. at 16. She also testified that he had received no treatment for alcohol problems; she has never felt that he had any alcohol problem. Tr. at 10-11. She stated that cooking wine is the only alcohol kept in the house. Tr. at 11. As for the individual's illegal drug use, the wife testified that he had smoked marijuana twice in 1998 or 1999; other than on those occasions, the individual had not used any illegal drugs in the course of their marriage. Tr. at 12. There has been no marijuana in the house since that time. Tr. at 24. She also testified that her husband has always seen therapists or psychologists on a regular basis about depression. Tr. at 25.

The Therapist

The individual's therapist testified that he voluntarily sought treatment from her in September 2004 for sleep disturbance, depressed mood, poor concentration, anxiety and irritability. Tr. at 41. His treatment included developing behavioral skills to manage his stress and anxiety. Tr. at 42. The individual had made her aware of his past history with alcohol and drugs, but she felt that they had no effect on his current work or home life, and consequently did not provide any treatment in that area. Tr. at 45, 48. Her best recollection was that the individual had informed her that his last use of alcohol had been two to two-and-one-half years before he came to her, and his last illegal drug use had been several years before. Tr. at 46. She also stated that, given the individual's past history, she could understand why the DOE psychiatrist might have diagnosed him with major depressive disorder, and why others may have indicated that he was bipolar. Nevertheless, she testified that she diagnosed him as suffering from "generalized anxiety disorder with depressive features" and "was looking into attention deficit disorder." Tr. at 44-45. She stated that he no longer needs treatment as intensely as he did when he came to her initially, but he could still benefit from continued learning. Tr. at 42.

The Internist

The individual's internist testified that he had been her patient since 2001. She stated that she has not seen any evidence of alcohol consumption and has never observed any cause for concern in this regard. Tr. at 75. Nor was she aware of any problems related to the use of illegal drugs. Tr. at 75. She expressed no opinion regarding the DOE psychiatrist's diagnosis of major depressive disorder, but rather stated that psychiatric illnesses were beyond her expertise and that a psychiatrist was managing the individual's care in that arena. Tr. at 76.

The Individual

The individual represented himself at the hearing. He testified a number of different times during the hearing, including on occasions when he was asking questions of other witnesses. For example, while he was questioning his wife, he provided information about his alcohol use, illegal drug use, and mental health treatments, which I will discuss below. During his wife's testimony, he testified that from 1991 to 1995 he drank no alcohol. Tr. at 20. A number of stressful events related to teenage stepchildren, family illnesses and deaths, plant closures and household moves intensified during that period. Tr. at 18-20. He sought medical help to cope with anxiety and stress, attended Alcoholics Anonymous for a four-month period, and threw out all the alcohol in the house. Tr. at 18, 20. As for use of illegal drugs, he stated that he used marijuana for a short period, roughly twice a month for no longer than six months in 1998 or 1999. Tr. at 22-23. He explained that his wife was using it to ease pain from a medical condition, and he was traveling for work more days than not, but he smoked with her occasionally to increase his libido, until he saw it was not effective and grew too uncomfortable with its illegality to continue. Tr. at 22. Finally, regarding his mental health, he testified that he was successfully treated for depression with electroconvulsive, or electric shock, therapy in 1995. Tr. at 23.

In his direct testimony, the individual addressed a number of facts that he felt the DOE psychiatrist had ignored, misunderstood, or misconstrued at the time of his evaluation. He indicated that many of the facts he reported to the DOE psychiatrist during his evaluation were incorrect due to exaggeration, generalization, or poor recollection. Tr. at 119, 128, 142-43. At the hearing, he made an effort to report more accurately the frequency and amounts of alcohol and illegal substances that he used in the past. Most of these corrections were minimal. *See, e.g.*, Tr. at 118, 121, 130, 135, 137, 140, 142, 143 (used substances "once" rather than "a few times," attended events "three or four times" rather than weekly or monthly). More important, all of these corrections were heard by the DOE psychiatrist, who remained in the hearing room throughout the proceeding. Some of the individual's restatements bear mention, however. Regarding his alcohol consumption, he pointed out that although the Notification Letter states that he "drank heavily" in April 1988, that finding was based on a narrative he attached to his September 2001 QNSP, which stated that his friends "smoked marijuana and drank heavily." DOE Exh. 9 at 13; Tr. at 56. He admitted that he did consume alcohol at that time, but denied that he was drinking heavily. Tr. at 56. In addition, he testified, and referred to the next paragraph in his QNSP narrative, that he soon became involved in the Masonic Lodge and changed his friends. Tr. at 56-57. The individual also pointed out that although the Notification Letter stated that he admitted himself for inpatient treatment in 1983 and resumed drinking alcohol at some point after leaving treatment, he admitted himself for treatment of cocaine addiction, not alcohol. Tr. at 60. Finally, he pointed out that the Notification Letter indicated that in 1986 or 1987, the individual's request to have his access authorization reinstated was denied "due to his minimizing his usage of drugs." Tr. at 62. He testified that he did minimize his usage on his application

for access authorization in 1979, but on his request for reinstatement he explained everything, because this occurred after his inpatient treatment. Tr. at 62-63.¹

The individual also testified concerning his current involvement with alcohol and illegal drugs. He stated that he has consumed no alcohol since December 2002. Tr. at 65. He participated in no formal treatment process, nor attended Alcoholics Anonymous, but rather just stopped completely and on his own. Tr. at 65. He further stated that his principal motivation for abstaining is to prevent interaction of alcohol with the antidepressant medications he takes. Tr. at 66. He maintained at the hearing that until he met with the DOE psychiatrist, he was unaware of the interactions between alcohol and several of his prescribed medications. Tr. at 149. He also maintained that the warning labels on many of his medications did not clearly state that alcohol should not be consumed with them. Tr. at 163. Nevertheless, he admitted that he has known since his 1983 inpatient treatment that alcohol should not be combined with antidepressants. Tr. at 145. While he testified that he has no intentions to consume alcohol in the future at the time of the hearing, he also stated that he had not focused on that issue. Tr. at 66.

As for his marijuana usage, the testimony emerged that he last used marijuana in 1999. Tr. at 68. That last usage was the same as the one he described during his June 2002 personnel security interview as having taken place two-and-a-half years ago earlier. DOE Exh. 8 at 38-39; Tr. at 68-69. At the hearing, the individual was clear that he had no future intention to use illegal drugs: "They're not going to be part of my life." Tr. at 70. He also stated that he now understands, for the first time, that because he holds an access authorization, the DOE is concerned with what he does outside of work as well as at work. Tr. at 80, 168.

With regard to his mental health issues, he stressed that he has sought out professional help for many years and in that respect he has exercised good judgment. Tr. at 54. In the early 1980s, according to the individual's testimony, a marriage therapist believed that the individual was suffering from depression. Tr. at 82. She referred him to a psychiatrist, who diagnosed him with bipolar disorder and gave him medications accordingly. Tr. at 82. More recently, he has been diagnosed with attention deficit disorder (ADD), and currently Ritalin is the only medication he is taking for treatment of a mental health issue. Tr. at 83.²

Other Witnesses

The individual's group leader stated that the individual is very professional and thorough in his work. Tr. at 30. He also testified that in the three years they have been working together, he has never observed the individual on the job as intoxicated or impaired in

¹ In the narrative he attached to his September 2001 QNSP, he wrote, "During my attempt to reactivate my security clearance [in 1986 or 1987], I denied and minimized my past drug use. . . . My clearance was denied 4/2/87." Ex. 9 at 12.

² His current treating psychiatrist did not appear at the hearing, but provided the individual with a written statement to the effect that he is being treated for dysthymia and ADD, and is compliant with treatment, "including medication (i.e. Wellbutrin and Ritalin) and counseling." Individual's Exhibit B.

any way, whether from alcohol or drug use or from a mental health standpoint. Tr. at 32, 37.

A co-worker of the individual stated that he has known him through work for the past four years and sees him on a daily basis. Tr. at 107. He testified that he has never seen the individual drink, nor has he ever observed him impaired in any manner. Tr. at 107. He further testified that he has never seen the individual use any illegal drugs, and any drug use would seem at odds with the individual's character. Tr. at 108. Finally, he stated that he had personal knowledge that the individual is very concerned and compliant with security rules. Tr. at 109.

A co-worker who also sees the individual on a social basis also testified. He stated that he has been acquainted with the individual for 14 years. Tr. at 97. In that time he has never seen the individual drink, and can recall the individual turning down an offer of a glass of wine at his house. Tr. at 100. He was unaware that the individual had ever used any illegal drugs during the 14 years of their friendship. Tr. at 99. He further stated that the individual had recently told him that he was having some mental health issues, but the witness had never observed any behavior that concerned him. Tr. at 99-100.

The DOE Psychiatrist

After he had heard the testimony of the other witnesses at the hearing, the DOE psychiatrist testified. He explained the conclusions he reached in his evaluation report and the bases for those conclusions that he formed during his evaluation of the individual. He then expressed his opinion of the individual's current status with regard to alcohol consumption, illegal drug use, and other mental health issues, in light of the testimony he heard at the hearing.

With respect to the individual's use of alcohol, the DOE psychiatrist testified that, on the basis of his evaluation of the individual, he concluded that the individual had suffered from alcohol abuse in 1983, and there was strong evidence that he had used alcohol habitually to excess in the past. Tr. at 176-77. He did not find that the individual was alcohol dependent, and stated that there was no evidence that the individual had abused alcohol since the early 1980s. Tr. at 188. He found only weak evidence that the individual was currently a user of alcohol habitually to excess: the individual had admitted that he became intoxicated twice a year, which the DOE psychiatrist stated did not constitute habitual use in his opinion. Tr. at 177. Nevertheless, because of the individual's past history with alcohol, he felt the individual should not be using alcohol to excess at all, Tr. at 177, and he stated that he equated intoxication with excess. Tr. at 185. As adequate evidence of rehabilitation from habitual excessive alcohol use, the DOE psychiatrist required either 100 hours of Alcoholics Anonymous meetings with a sponsor or 50 hours in an alcohol treatment program, in combination with two years of abstinence from alcohol. As adequate evidence of reformation from habitual excessive alcohol use, he required five years of abstinence in the absence of participation in Alcoholics Anonymous or an alcohol treatment program. Tr. at 177-78. Based on the evidence presented at the hearing, the DOE psychiatrist conceded that the individual was

not currently a user of alcohol habitually to excess, in light of the evidence that, despite two episodes of intoxication in December 2002, he drank rarely in the two years preceding that month and not at all since then. Tr. at 190-91, 194. Nevertheless, he maintained that the individual had used alcohol habitually to excess in the past, and had not shown adequate evidence of rehabilitation or reformation. Ultimately, though he acknowledged that the individual was “doing the right things for all the right reasons,” he stated his opinion that the individual’s two years and three months of abstinence from alcohol since December 2002 was not enough to show adequate evidence of reformation. Tr. at 204.³

With respect to the individual’s use of illegal drugs, the DOE psychiatrist testified that, on the basis of his evaluation of the individual, he determined that the individual had last used marijuana in 1999, following a history of use of several illegal drugs throughout the 1970s and 1980s. Tr. at 181. As adequate evidence of rehabilitation or reformation from illegal drug use, the DOE psychiatrist stated in his report the same treatment and time limits as he required for use of alcohol habitually to excess. Tr. at 182. Although the individual’s last use of marijuana was four years before the evaluation, the DOE psychiatrist was unwilling to state that those four years constituted adequate evidence of reformation from illegal drug use because he believed that the individual was not honest, reliable, or trustworthy with respect to drug use. Tr. at 181. At the hearing, however, the DOE psychiatrist acknowledged that more than five years had now passed since the individual’s last use of marijuana, Tr. at 182, and he concluded that the individual had shown adequate evidence of reformation from his illegal drug use.

Finally, with respect to the individual’s mental health issues, the DOE psychiatrist diagnosed the individual as suffering from major depressive disorder, a condition that could cause a significant defect in his judgment or reliability. Tr. at 184. At the hearing, he explained how he arrived at this diagnosis. The individual had stated during his personnel security interview in June of 2002 that he had obtained significant relief from electroconvulsive therapy, and the DOE psychiatrist wrote in his evaluation report that such relief “is very strong evidence that he had Major Depression, since this is the only type of depression that is helped at all by electro[convulsive] therapy.” DOE Exh. 3 at 13 n.26. The DOE psychiatrist reiterated this position at the hearing. Tr. at 183. In any event, the DOE psychiatrist determined that the individual meets the criteria for Major Depression set forth in the *Diagnostic and Statistical Manual of the American Psychiatric Association, Fourth Edition, Text Revision* (DSM IV-TR). DOE Exh. 3 at 26-27. The DOE psychiatrist determined that the individual had suffered a major depressive episode in 1995, and suspected from his history that the disorder was recurrent. *Id.* at 27.

The DOE psychiatrist also discussed diagnoses that other doctors had applied to the individual. In 1990 the individual was diagnosed with bipolar disorder. *Id.* at 12. The DOE Psychiatrist testified that bipolar disorder is another condition that responds well to electroconvulsive therapy, since one of its components is major depression. Tr. at 183.

³ The individual presented no evidence of participation in Alcoholics Anonymous or other alcohol treatment program since December 2002, so mitigation of the concern through rehabilitation was not at issue.

However, after reviewing the medical records from the physician who made the diagnosis of bipolar disorder, the DOE psychiatrist found the bases for that diagnosis to be weak at best. Tr. at 183; DOE Exh. 3 at 12 n.24. He also stated that other health professionals including his current doctor and counselor, had diagnosed the individual with dysthymia and, most recently, attention deficit disorder (ADD). Tr. at 183, 196. He conceded that dysthymia, which he described as being depressed more days than not for at least two years, Tr. at 183, was “a reasonable way of conceptualizing” the chronic depression that has accompanied the individual through his adult life. Tr. at 195. Nevertheless, the DOE psychiatrist did not make the same diagnosis. As for the diagnosis of ADD, the DOE psychiatrist testified that he did not see any evidence of the disorder when he was evaluating the individual, but he did not assess the individual specifically for that concern at the time. Tr. at 201. In any event, because he does not consider ADD a condition that causes or may cause a significant defect in judgment or reliability, Tr. at 202, a diagnosis of that condition would have no bearing on this proceeding.

The DOE psychiatrist summarized his concerns about the individual’s depressive disorder:

Q. (by Mr. Schwartz) Finally, regarding Criterion H, you found that major depressive disorder is the kind of illness or mental condition that can cause a significant defect in judgment or reliability for as long as [the individual] continues to use alcohol or drugs habitually to excess.

A. Until such time as he is showing adequate evidence of reformation, simply because he has said that he had – that he tends to use alcohol and drugs when he’s been anxious or depressed in the past. So you want to have him get to that point where even if he got anxious or depressed, he wouldn’t go back to using illegal drugs or alcohol.

Q. And [because] you’re not comfortable saying that he had shown adequate evidence of reformation or rehabilitation for his alcohol problem, you would find that his major depressive disorder . . . could still cause defect in judgment, because he hasn’t achieved five years of reformation?

A. Yes.

Q. Under alcohol, not under drugs anymore, but if under alcohol alone?

A. Yes, although if he got . . . very depressed and anxious again, he could go back to using drugs. But I’m making the opinion as of now, I think the likelihood of that is low.

Tr. at 205.

Findings of Fact and Analysis

This case presents a unique challenge. The individual testified that he unintentionally provided discrepant information because he is prone to exaggeration. He testified that he had no idea that, for example, certain exaggerations he made during his psychiatric examination would be taken literally. Tr. at 93. After considering all the testimony, it is my impression that the individual has a poor memory. When attempting to respond to requests for information about earlier stages in his life, he tends to generalize and overstate rather than understate. The unfortunate result of this tendency is that I cannot ascribe the usual weight to his testimony, as I cannot fully rely on its accuracy. In addition, the individual's wife's memory is not entirely reliable, but in her case she tends to understate rather than overstate. Thus, for example, she cannot recall her husband having a single alcoholic drink in six years, while the individual testified that he was intoxicated twice in December 2002. I have made every effort to ascertain the truth of the facts that have a bearing upon the decision that I am charged to make. Nevertheless, in the event I cannot reconcile discrepancies in facts, I am bound by the governing regulations to resolve such matters in favor of the national security.

A diagnosis of an illness or mental condition that causes or may cause a significant defect in judgment or reliability (Criterion H) raises concerns regarding a person's willingness or ability to protect classified information, and drinking alcohol habitually to excess (Criterion J) may impair social or occupational functioning, increasing the risk of an unauthorized disclosure of classified information. Using illegal drugs (Criterion K) likewise increases that risk and at the same time raises concerns regarding a person's willingness to abide by established rules and regulations. The local security office had a substantial basis in the record for raising these concerns. Upon consideration of the evidence presented at the hearing, however, I find that the individual has sufficiently mitigated all of the concerns raised in the Notification Letter.

Criterion H: Illness or Mental Condition

The individual has sought treatment and counseling from mental health professionals for much of his adult life. He has been diagnosed by doctors and counselors with various forms of depression, as well as bipolar disorder and attention deficit disorder. His current psychiatrist, who did not appear as a witness, has been treating him for dysthymia and ADD. Ind. Exh. B. The DOE psychiatrist's opinion was that he suffers from major depressive disorder, possibly recurrent. According to the DOE psychiatrist, ADD is not a condition that "causes, or may cause, a significant defect in judgment or reliability." Tr. at 202; *see* 10 C.F.R. § 710.8(h). A diagnosis of ADD is, therefore, irrelevant to this proceeding. The individual's most recent therapist at the time of the hearing diagnosed him as suffering from "generalized anxiety disorder with depressive features." She did not believe that he was currently suffering from major depression, but stated that, given his history, she could understand why the DOE psychiatrist may have diagnosed him with that condition. Tr. at 44. The DOE psychiatrist supported his diagnosis of major depressive disorder with the uncontroverted evidence that electroconvulsive therapy

(ECT) administered in 1995 provided the individual with remarkable relief from his symptoms, and that ECT is successful only in cases of major depression. I am convinced that the individual suffered at least one episode of major depression in 1995, and may be subject to future episodes.

The security concern in the individual's case is not that he suffers from some form of depression, but that this condition is co-existent with using alcohol and illegal drugs habitually to excess. It is the combination of conditions that the DOE psychiatrist determined "may cause a significant defect in judgment or reliability." DOE Exh. 3 at 38. He conditioned this concern by stating, both in his evaluation report and in his testimony, that it would remain a concern "until such time as he is showing adequate evidence of rehabilitation or reformation from using both alcohol and illegal drugs habitually to excess." *Id.*; Tr. at 184. As discussed below, I am convinced that he no longer uses alcohol or illegal drugs habitually to excess and will not do so in the future. Consequently, the DOE psychiatrist's diagnosis of major depressive disorder, standing alone, no longer raises security concerns under Criterion H. I conclude that the individual has successfully mitigated the DOE's concerns under that criterion.

Criterion J: Use of Alcohol Habitually to Excess

The individual has recounted his history of involvement with alcohol at least three times in the course of this most recent evaluation of his eligibility to retain his access authorization: during a personnel security interview in June 2002, during his evaluation by the DOE psychiatrist, and at the hearing. Many of the details he provided regarding past usage have not been consistent. He has explained that he is prone to exaggeration, and exaggerated particularly during his interview with the DOE psychiatrist. Tr. at 142. I find it unusual that an individual would overstate, rather than understate, his involvement with alcohol in a situation where his eligibility for access authorization is being considered. Nevertheless, the factual discrepancies present in his narrations of his personal history of alcohol consumption have little bearing on my decision in this case. His exaggerations, if such they were, led the DOE psychiatrist to conclude that the individual had used alcohol habitually to excess in the past. They did not support a diagnosis of alcohol dependence or alcohol abuse, though the DOE psychiatrist determined that the individual had suffered from alcohol abuse in 1983. I also observe that his statements concerning his more recent use of alcohol have been consistent. I have no reason to deem this information unreliable.

The DOE psychiatrist based his conclusion that the individual was currently using alcohol habitually to excess on two factors, "his long history of using habitually to excess and his lack of a period of adequate evidence of rehabilitation or reformation." DOE Exh. 3 at 34. The latter factor is based on the individual's admission, which he does not contend is an exaggeration, that he was intoxicated twice in December 2002, two months before his evaluation by the DOE psychiatrist. *Id.* at 23. At the hearing, the DOE psychiatrist testified that he had strong evidence that the individual had been a user of alcohol habitually to excess in the past, and weak evidence that he was currently such a user on the basis of his December 2002 intoxications. Tr. at 176-77. He continued:

And I say it's weak in the present, because when asked, he admitted to me that he was getting intoxicated twice a year. Now, that's not really habitually, and if somebody didn't have a past history where the evidence was strong of using alcohol habitually to excess, I wouldn't make an issue of it. But in order to show adequate evidence of reformation from . . . using alcohol habitually to excess, he really shouldn't be using it to excess at all. And the other issue was that at some time in the past [1983] he did suffer from alcohol abuse. . . . So given that he had a past history of alcohol abuse, given that he had strong evidence that he had used it habitually to excess, and weak evidence that he was currently using it habitually to excess, my opinion was [that he was a user habitually to excess].

Tr. at 177. When questioned later in the hearing, however, in light of the evidence that the individual had not consumed any alcohol since December 2002, the DOE psychiatrist testified, "Well, as I said, I'm willing to say that you've used it excessively twice in the past two years, and to me that would be twice too many. So . . . I'll rescind the word [habitual] about your current drinking and . . . say you just drank to excess twice in the year you saw me." Tr. at 194.

There is no evidence in the record that the individual has attended Alcoholics Anonymous or obtained any other form of treatment for his alcohol problem in at least 15 years. Therefore, the individual has not mitigated the DOE's legitimate concerns about his alcohol use through rehabilitation. The sole question is whether he has mitigated those concerns through reformation, that is, by changing his drinking habits. As adequate evidence of reformation from habitual excessive alcohol use, the DOE psychiatrist required five years of abstinence in the absence of participation in Alcoholics Anonymous or an alcohol treatment program. Tr. at 177-78. The DOE psychiatrist did not diagnose the individual with alcohol dependence, nor with alcohol abuse more recently than 1983, more than 20 years ago. During the hearing, the DOE psychiatrist determined that the individual did not currently drink alcohol habitually to excess, but continued to maintain that he had in the past. At the time of the hearing, the individual had been abstinent for more than two years.

At the hearing, the individual testified that he has given up alcohol completely and has no intention of drinking alcohol again. Tr. at 66. He stated that through the course of this personnel security proceeding, he has learned about the interaction between alcohol and the various medications he takes to treat his depression as well as a number of physical disorders. Tr. at 149. He further testified, "And after everything I've read [online about drug interactions], it's obvious to me that for me to ever have a drink again would be ridiculous." *Id.* While I recognize that the individual must have been aware of the dangers of interaction of alcohol with prescribed medications as early as 1983, I find he did not take those warnings to heart until his interview with the DOE psychiatrist. He also emphasized his maturity and the changes in lifestyle and attitude he has undergone

since the 1970s and 1980s, when he freely consumed alcohol and illegal drugs. Tr. at 211.

In reaching a decision whether the individual's involvement with alcohol presents a current concern for the national security, I have taken into consideration a number of factors: the individual's period of abstinence, his reasons for abstaining, his non-habitual use of alcohol for several years preceding abstinence, the absence of alcohol (except cooking wine) in the house, the DOE psychiatrist's opinion at the hearing that the individual no longer uses alcohol habitually to excess, and my assessment of the individual's sincerity and straightforwardness. I also consider the DOE psychiatrist's definition of what constitutes adequate evidence of rehabilitation or reformation: "[T]o me adequate evidence of rehabilitation or reformation is a degree of rehabilitation or reformation where your risk of relapse in the next five years is low. And to me, low is five or ten percent or less." Tr. at 179. I conclude that the DOE psychiatrist's opinion that the individual used alcohol habitually to excess in the past raises legitimate security concerns under Criterion J. Nevertheless, after assessing all the evidence presented in this proceeding, I am convinced that the individual has now reformed his habitual use of alcohol to excess and therefore has successfully mitigated the DOE's concerns under that criterion.

Criterion K: Use of Illegal Drugs Habitually to Excess

The evidence presented in this proceeding establishes that the individual used a variety of illegal drugs in the 1970s and 1980s. In addition, he voluntarily admitted himself into a residential treatment program for cocaine abuse in 1983. At some point after completing that program, the individual resumed using illegal drugs, in the form of marijuana. His last use of marijuana occurred in 1999.

In his evaluation report, the DOE psychiatrist stated that he found no evidence that the individual was dependent on illegal substances or that he was suffering from substance abuse at the time of the evaluation. He did, however, determine that the individual had used illegal drugs habitually to excess, and that five years of "absolute sobriety" would be needed to establish adequate evidence of reformation from illegal drug use. At the time of the evaluation, the individual's last use of marijuana was four years earlier, and the DOE psychiatrist was unwilling to accept that period of sobriety as adequate evidence of reformation. DOE Exh. 3 at 36.

At the hearing the DOE psychiatrist expressed his opinion that the individual now showed adequate evidence of reformation from his use of illegal substances habitually to excess. Tr. at 202. I concur with the DOE psychiatrist's conclusion. By the date of the hearing, well more than five years had now passed since the individual's last use of marijuana. The individual stated his reasons for using marijuana in his testimony, and acknowledged his poor judgment in choosing the substance as a remedy. Tr. at 70-71. I also consider the extent to which the individual used marijuana in the past: within the last twenty years, he used illegal drugs for a limited period in 1999, and during another period eight or nine years before that. Tr. at 70. There is no evidence before me that

contests these facts. On the other hand, I have the DOE psychiatrist's opinion that the individual's abstinence from illegal drug use since 1999 is adequate evidence of reformation by his definition, that is, that the individual's risk of relapse in the next five years is five to ten percent or lower. After considering the record before me, including the individual's past pattern of use, current abstinence, and acknowledgment of his past poor judgment, as well as the DOE psychiatrist's testimony, I find that the individual has reformed his habitual use of illegal drugs and therefore has successfully mitigated the local security office's national security concerns under Criterion K.

Criterion L: Honesty, Reliability and Trustworthiness

The Notification Letter listed as bases for its Criterion L concerns two sets of events that tend to show that the individual is not honest, reliable or trustworthy. The first revolves around a 1987 denial of his request for reinstatement of his access authorization. The concern is not the denial itself, but the fact the denial was based on the individual's minimization of his use of illegal drugs. Contrary to the individual's testimony at the hearing, the bulk of the evidence establishes that he did minimize his use of illegal drugs during the 1986-1987 access authorization reinstatement proceeding. *See, e.g.*, DOE Exh. 11 (1987 notification letter stating that he underreported alcohol and cocaine use during a personnel security interview); DOE Exh. 9 at 12 (narrative attachment to his September 2001 QNSP: "During my attempt to reactivate my security clearance [in 1986 or 1987], I denied and minimized my past drug use. . . . My clearance was denied 4/2/87.") From my observation of the individual's behavior and demeanor throughout this proceeding, I have concluded that he has not deliberately falsified information. He has, however, a poor memory of past events, as evidenced by his relying on notes and files of documents in situations where others would be able to produce accurate information from their memory. I believe his statement at the hearing that he corrected his 1979 minimizations of drug use in his 1986 QNSP was a matter of not remembering correctly and speaking without being able to research his notes, rather than a deliberate attempt to place his unreliable behavior farther into the past than it actually occurred. In any event, the individual set forth all the details of his past involvement with illegal drugs in his September 2001 QNSP. I find that the individual's steps toward reliability and good judgment, and away from alcohol and illegal drug use have been gradual and steady. Although he clearly intended to mislead the DOE as recently as the late 1980s, that behavior is nearly 20 years old, and had been replaced by appropriate conduct.

The second set of facts supporting the DOE's Criterion L concerns occurred while the individual was in the military. His military security clearance was suspended twice, once for using marijuana, and a second time for purchasing four ounces of marijuana. Such behavior, which violates federal and local law, clearly raises security concerns, specifically regarding whether an individual is unlikely to obey other laws or regulations, particularly with respect to the required handling of classified information and special nuclear material. I do note, however, that the drug use that led to the suspensions occurred at least 30 years ago, when the individual was no more than 22 years old. If these incidents represent a pattern of arrests, this pattern ended after he left the military in 1976, as there is no evidence in the record of any arrests since that time. If these

incidents represent a pattern of involvement with marijuana, the evidence at the hearing established that the pattern was broken by 1999, and even the DOE psychiatrist testified that he had no concern in this regard.

The individual has mitigated the DOE's Criterion L concerns. While I recognize that the individual suffers from poor long-term memory, I am convinced that he has matured and improved his judgment in the 20 years that have passed since the last of the incidents that raised security concerns for the DOE. I am further convinced that it is extremely unlikely that the individual will attempt to mislead the DOE or, as stated in the above section, engage in questionable activities involving illegal drugs in the future.

Conclusion

Based on the record in this proceeding, I find that the individual has resolved the security concerns under 10 C.F.R. § 710.8(h), (j), (k) and (l) that the local security office specified in its Notification Letter. For the reasons explained in this decision, I find the individual demonstrated that granting his access authorization would not endanger the common defense and security and would be clearly consistent with the national interest. Accordingly, it is my decision that the individual's access authorization should be granted.

William M. Schwartz
Hearing Officer
Office of Hearings and Appeals

Date: December 12, 2006